

REMARKS

In the Office Action mailed 7/27/04, the formal drawings were objected to under 37 CFR 1.84 or 1.152. Applicant respectfully requests the Examiner to hold this objection in abeyance until allowable subject matter is agreed upon in the present application. Claims 7, 10-12, 14, 16-18, 20 and 22 are objected to because of typographical errors. Applicant thanks the Examiner for pointing out the errors in need of correction; Applicant has made all of the recommended corrections to these claims herein. Claim 9 was rejected under 35 USC 112, second paragraph, as being indefinite for failing to point out the particular subject matter which applicant regards as the invention. Specifically, claim 9 lacked proper antecedent basis; Applicant has corrected this problem by correcting claim 9 to properly depend from claim 8 rather than claim 1.

Claims 1-5, 10-13, 16-19, and 22-25 are rejected under 35 USC 102(b) as being anticipated by Chen et al. (U.S. 5,832,208). Before analyzing Chen in detail, Applicant draws attention to the independent claims appearing in this rejection:

1. (Original) In a networked server having a file system therein, a virus detection monitoring system comprising:

- a) a check-in interceptor configured to monitor the network server for incoming files and intercept incoming files before said files are transferred to the file system of the server; and
- b) an anti-virus interface operatively coupled to said check-in interceptor, said anti-virus interface configured to transfer the incoming files which are intercepted to an anti-virus application for virus detection and removal.

10. (Currently Amended) In a networked server having a file system therein, a method for virus detection monitoring comprising:

- a) intercepting incoming files before the incoming files are transferred to the file system of the server; and
- b) transferring the incoming files which are intercepted to an anti-virus application for virus detection and removal.

16. (Currently Amended) A program storage device readable by a machine, tangibly embodying a program of instructions executable by the machine to perform a method for virus detection monitoring, said method comprising:

- a) intercepting incoming files before the files are transferred to a file system of a server; and
- b) transferring the incoming files which are intercepted to an anti-virus application for virus detection and removal.

22. (Currently Amended) In a networked server having a file system therein, a virus detection monitoring system comprising:

- a) means for intercepting incoming files before the files are transferred to the file system of the server; and
- b) means for transferring the incoming files which are intercepted to an anti-virus application for virus detection and removal.

The remaining claims in this rejection are dependent upon either claim 1, 10, 16 or 22 and thus incorporate all of the limitations of these respective base claims. Applicant respectfully traverses the 102(b) rejection based on Chen. Chen does not disclose

intercepting incoming files before they reach a file system. In support of this assertion, Examiner's attention is directed to Chen at col. 6, lines 54-58:

*For the purpose of clarity of description, in the example used herein, the agent 110 of the representative embodiment of the present invention is intended to scan attachments to files and messages **generated within, sent from, or received by the Lotus Notes program.***

By contrast, the present invention (as claimed in claims 1, 10, 16 and 22) functions upstream of the invention taught by Chen, and intercepts incoming files **before** they are transferred to a file system. The present invention seeks to limit the damage a virus can cause **before** it reaches a file system and, implicitly, an application program, as a file system must be engaged to feed the files to the application program. Chen does not teach, disclose, nor otherwise suggest performing virus protection until after the message somehow associated with an application program ("generated within, sent from, or received by the Lotus Notes program.")

More evidence of this shortcoming of Chen appears at FIG. 3 and the accompanying text. Chen teaches a system that scans an email system (which is a file system, using Examiner's argument that an email message is a file). Attention is directed to col. 7, lines 44-46:

*If an attachment does not exist, then the Agent 110 determines in step 240 whether **the entire mail system 140 has been scanned.***

Directing Examiner's attention to MPEP 2131, the threshold issue under Section 102 is whether the Examiner has established a *prima facie* case for anticipation. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir.

1987)”. “The identical invention must be shown in as complete detail as is contained in the ...claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1566 (Fed. Cir. 1989). The elements must be arranged as required by the claim but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

To anticipate a claim under 35 U.S.C. § 102, a single source must contain all of the elements of the claim. *Lewmar Marine Inc. v. Barient, Inc.*, 827 F.2d 744, 747, 3 U.S.P.Q.2d 1766, 1768 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988). Moreover, the single source must disclose all of the claimed elements “arranged as in the claim.” *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984).

Because Chen lacks the limitation of intercepting incoming files before they are transferred to a file system, Applicant respectfully submits that Chen does not contain all of the elements of claims 1 and 10 and thus a 35 USC 102 rejection cannot be sustained.

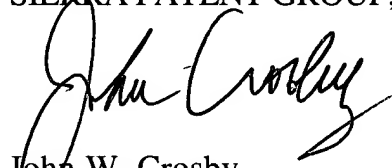
Claims 6, 14, 20 and 26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al in view of Hodges et al. (U.S. 6,269,456). Applicant respectfully traverses this rejection. Claim 6 depends from claim 1 and thus contains all of claim 1’s limitations. Applicant incorporates its argument from above regarding Chen and claim 1 of the present application and respectfully asserts that because claim 1 is not anticipated by Chen, claim 6 is not anticipated by Chen or Hodges, as neither of the cited prior art teach the limitations of claim 1 of the present invention. The same argument applies to rejected claim 14 (depending from claim 10), claim 20 (dependent from claim 16), and claim 26 (dependent from claim 22).

Claims 8 and 9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. in view of Tso et al (U.S. 6,088,803). Applicant respectfully traverses this rejection and incorporates the above analysis of claim 1 with respect to Chen. As Chen and Tso do not teach, disclose, nor otherwise suggest the limitations of claim 1, and claims 8 and 9 depend from claim 1, claims 8 and 9 are thus patentable because they incorporate all of the limitations of claim 1 of the present application.

#### CONCLUSION

Based on the foregoing, Applicant asserts that the claims, as currently amended, are patentable over Examiner's cited prior art. Early allowance of claims 1-27 is requested. If the Examiner feels there are any remaining issues that can be resolved by telephone, the Examiner is invited to call the undersigned attorney at the phone number appearing below.

Respectfully submitted,  
SIERRA PATENT GROUP, LTD.



John W. Crosby  
Reg. No.: 49,058

Dated: October 27, 2004

Sierra Patent Group, Ltd.  
P.O. Box 6149  
Stateline, NV 89449  
(775) 586-9500  
(775) 586-9550 Fax